

## SENATE BILL NO. 25

INTRODUCED BY MANGAN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PLACEMENT OF YOUTH WITH A CERTAIN MENTAL DISORDER DISORDERS IN STATE YOUTH CORRECTIONAL FACILITIES; ENUMERATING SOME MENTAL DISORDERS THAT WOULD PREVENT PLACEMENT IN A STATE YOUTH CORRECTIONAL FACILITY; ~~DELETING THE REQUIREMENT THAT THE DEPARTMENT MOVE A YOUTH FROM A CORRECTIONAL FACILITY WHEN THE YOUTH HAS A MENTAL ILLNESS;~~ AMENDING SECTIONS 41-5-1504, 41-5-1512, AND 41-5-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-5-1504, MCA, is amended to read:

**"41-5-1504. Finding of suffering from mental disorder and meeting other criteria -- rights -- limitation on placement.** (1) A youth who is found to be suffering from a ~~mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1)~~ DISORDER IN THOUGHT OR MOOD SO SUBSTANTIAL THAT IT IMPAIRS JUDGMENT, BEHAVIOR, PERCEPTIONS OF REALITY, AND THE ABILITY TO COPE WITH THE ORDINARY DEMANDS OF LIFE, INCLUDING BUT NOT LIMITED TO MAJOR DEPRESSION, SCHIZOPHRENIA, OR BIPOLAR DISORDER, is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, ~~prior to placement or sentencing,~~ is found, prior to placement or sentencing, to be suffering from a ~~mental disorder, as defined in 53-21-102~~ DISORDER IN THOUGHT OR MOOD SO SUBSTANTIAL THAT IT IMPAIRS JUDGMENT, BEHAVIOR, PERCEPTIONS OF REALITY, AND THE ABILITY TO COPE WITH THE ORDINARY DEMANDS OF LIFE, including but not limited to major depression, schizophrenia, OR bipolar, or borderline personality disorder, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility UNLESS THE COURT FINDS THAT THE YOUTH POSES A SIGNIFICANT DANGER TO THE COMMUNITY.

(3) ~~A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

1       (3) A YOUTH WHO, AFTER PLACEMENT IN OR SENTENCING TO A STATE YOUTH CORRECTIONAL FACILITY,  
2       DEVELOPS A DISORDER IN THOUGHT OR MOOD SO SUBSTANTIAL THAT IT IMPAIRS JUDGMENT, BEHAVIOR, PERCEPTIONS  
3       OF REALITY, AND THE ABILITY TO COPE WITH THE ORDINARY DEMANDS OF LIFE, INCLUDING BUT NOT LIMITED TO MAJOR  
4       DEPRESSION, SCHIZOPHRENIA, OR BIPOLAR DISORDER, MUST BE MOVED TO A MORE APPROPRIATE PLACEMENT IN  
5       RESPONSE TO THE YOUTH'S MENTAL HEALTH NEEDS."

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7       **SECTION 2. SECTION 41-5-1512, MCA, IS AMENDED TO READ:**

8       **"41-5-1512. Disposition of youth in need of intervention or youth who violate consent**  
9       **adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent  
10       adjustment, the youth court may enter its judgment making one or more of the following dispositions:

11           (a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this  
12       subsection.

13           (b) place the youth in a residence that ensures that the youth is accountable, that provides for  
14       rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider  
15       placement recommendations from the youth placement committee.

16           (c) commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency  
17       intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention  
18       program for the purposes of funding a private, out-of-home, residential placement subject to the conditions in  
19       41-5-1522. In an order committing a youth to the department or to the youth court, the court shall determine  
20       whether continuation in the youth's own home would be contrary to the welfare of the youth and whether  
21       reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's  
22       home.

23           (d) order restitution for damages that result from the offense for which the youth is disposed by the youth  
24       or by the person that contributed to the delinquency of the youth;

25           (e) require the performance of community service;

26           (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth  
27       to receive counseling services;

28           (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or  
29       the persons having legal custody of the youth;

30           (h) require the parents, guardians, or other persons having legal custody of the youth to furnish services

1 the court may designate;

2 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and  
3 the community;

4 (j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the  
5 testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering  
6 from a ~~mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1)~~ disorder in thought or  
7 mood so substantial that it impairs judgment, behavior, perceptions of reality, and the ability to cope with the  
8 ordinary demands of life, including but not limited to major depression, schizophrenia, or bipolar disorder;

9 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

10 (l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a  
11 specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the  
12 confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving  
13 record. The probation officer shall notify the department of justice when the confiscated driver's license has been  
14 returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The  
15 probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian,  
16 return a youth's confiscated driver's license before the termination of the time period for which it had been  
17 confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of  
18 a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth,  
19 nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

20 (m) order the youth to pay a contribution covering all or a part of the costs for the adjudication,  
21 disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision,  
22 care, custody, and treatment of the youth, including the costs of counseling;

23 (n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

24 (o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or  
25 facility with the following conditions:

26 (i) The court may not order placement for evaluation at a youth correctional facility of a youth who has  
27 committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated  
28 a consent adjustment.

29 (ii) The placement for evaluation must be on a space-available basis at the county's expense, which is  
30 not reimbursable under part 19 of this chapter.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

**Section 3.** Section 41-5-1513, MCA, is amended to read:

**"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility if the youth suffers from a mental disorder, as defined in 53-21-102 DISORDER IN THOUGHT OR MOOD SO SUBSTANTIAL THAT IT IMPAIRS JUDGMENT, BEHAVIOR, PERCEPTIONS OF REALITY, AND THE ABILITY TO COPE WITH THE ORDINARY DEMANDS OF LIFE, including but not limited to major depression, schizophrenia, OR bipolar, or borderline personality disorder, and shall place the youth in an appropriate placement as required by 41-5-1504.

The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b).

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that

1 would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as  
2 a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in  
3 a disposition under this subsection.

4 (d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender,  
5 the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of  
6 subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may  
7 order the department to notify the court within 5 working days before the proposed release of a youth from a  
8 youth correctional facility. Once a youth is committed to the department for placement in a state youth  
9 correctional facility, the department is responsible for determining an appropriate date of release or an alternative  
10 placement.

11 (e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if  
12 committed by an adult.

13 (2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex  
14 offender treatment before a youth is discharged.

15 (3) The court may not order a local government entity to pay for care, treatment, intervention, or  
16 placement. A court may order a local government entity to pay for evaluation and in-state transportation of a  
17 youth.

18 (4) The court may not order a state government entity to pay for care, treatment, intervention,  
19 placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without  
20 approval from the cost containment review panel."

21  
22 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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